

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
June 1, 2007 Session

MICHAEL HAYES v. DONALD W. WASHBURN, ET AL.

Appeal from the Chancery Court for Perry County
No. 4395 Timothy L. Easter, Judge

No. M2006-01135-COA-R3-CV - Filed October 31, 2007

In an action for breach of contract, the trial court held that the contract was valid and enforceable yet declined to enforce its terms because to do so would, in the trial court's opinion, unjustly enrich one party. The trial court reached this conclusion based on its finding that the parties' agreement in the contract regarding one party's contribution to the project was not substantiated by the party; *i.e.*, the party did not prove that he contributed \$63,000 as agreed by the parties in the contract. We reverse. Once it is found that a valid contract exists, the contract should be interpreted as written, parol evidence may not be introduced to vary its terms, and unjust enrichment may not be used to alter contractual terms.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court Reversed

PATRICIA J. COTTRELL, J., delivered the opinion of the court, in which WILLIAM C. KOCH, JR., P.J., M.S., and FRANK G. CLEMENT, JR., J., joined.

Ricky L. Wood, Parsons, Tennessee, for the appellant, Michael Hayes.

Charles N. Griffith, Waverly, Tennessee, for the appellees, Donald W. Washburn and Wife, Doris L. Washburn.

OPINION

The matter concerns one party's efforts to recover his contributions to an unsuccessful residential real estate development project. The parties agree that the basic facts surrounding their disagreement are not disputed. The defendants, Donald and Doris Washburn, own a 358-acre farm in Perry County adjacent to the Tennessee River (hereinafter referred to as "property"). The Washburns met the plaintiff, Michael Hayes, while the parties were living in Colorado. The parties agreed to an informal "joint venture" to develop the Washburns' property in Perry County. Mr. Hayes' contribution to the project was to be capital and labor. The project was called "Peoples Landing."

While the parties' agreement was not initially reduced to writing, after the project was underway, they entered into a series of agreements about the project. In July of 2003, the parties signed a one-sentence prepared commitment by Donald Washburn that provided as follows:

I Don Washburn do hereby promise to Mike Hayes that any money invested in Peoples Landing will be reimbursed by either money or land.

Five months later, in December of 2003, the Washburns executed a promissory note promising to pay an unnamed payee \$50,000. Mr. Hayes also signed the note and the parties do not dispute that Mr. Hayes is the payee. The note appears to provide that the debt is due in March of 2008, with ten percent (10%) interest on late "unpaid amounts."

Thereafter, the parties worked on the project preparing to subdivide 11 acres of the farm and sell lots. In May of 2004, the parties executed a contract setting forth how Mr. Hayes would be repaid for the labor and capital he had contributed to the project ("Contract").¹ The Contract provided it was made "for consideration of Michael Hayes investment and interest" in Peoples Landing. It is important to note that the Washburns did not convey any interest in the property to Mr. Hayes. The parties agreed in the Contract that Mr. Hayes' capital contribution to the project totaled \$63,000 (representing credit card debt and a home equity loan). The Contract then provided as follows:

It is further agreed that this debt will be paid by the sale of Peoples Landing lots. Payments will be made to Michael Hayes per lot sale at the rate of 40% of said sale price sold until total debt is paid (sic) off.

In consideration of Michael's work involvement in Peoples Landing from June 2003- June 2004 Lot #2 Phase I of Peoples Landing subdivision will be deeded as full compensation.

Once debt is paid in full as further compensation for work performed after June 2004 it is agreed that Michael Hayes will be paid 12% of each lot sold as long as he is involved in the development, marketing and sales of Peoples Landing.

The project development stalled, apparently due to various reasons including lack of needed capital and failure to obtain necessary permits from the Tennessee Valley Authority ("TVA") to install utilities. At the time of trial, no lots had been sold. In a letter to Mr. Washburn dated March of 2005, the TVA expressed significant reservations about developing the property related to their ability to manage flood control operations. The portion of the property that was subdivided is below the flood plain. Mr. Washburn testified at trial that he planned to proceed with the project. Mr. Hayes testified that as far as he knew the lots could be sold.

¹Neither of the parties try to argue on appeal that either of the prior agreements were in effect or were enforceable after the parties entered into their final contract in May of 2004.

In October of 2004, Mr. Hayes filed suit against the Washburns seeking a restraining order to prevent the Washburns from selling or encumbering the property, imposition of a lien on the property and damages. The Washburns then filed a counterclaim alleging, among other things, that any award to Mr. Hayes would constitute unjust enrichment, that they are entitled to \$17,642.20 from Mr. Hayes for breach of contract and/or reimbursement, and asking that the court determine that any recovery due Mr. Hayes be under *quantum meruit*.

On November 5, 2004, the Washburns notified Mr. Hayes by letter that effective June 23, 2004, “I terminated you from any involvement or representation with Peoples Landing.” The “effective” date of the termination was only one month after the parties signed the Contract in May of 2004. Although dated in November, there is agreement that the termination was effective in June of 2004.

The trial court found the Contract to be clear, unambiguous, valid and enforceable. Since there exists an enforceable contract, the trial court denied the Washburns’ request that Mr. Hayes recover under *quantum meruit*. As to the Washburns’ claim that a recovery by Mr. Hayes would amount to unjust enrichment, the trial court agreed, finding that since Mr. Hayes was unable, despite repeated requests, to show how the \$63,000 debt was incurred to further Peoples Landing, allowing Mr. Hayes to recover the full amount would constitute unjust enrichment. The trial court then concluded that Mr. Hayes was entitled to \$50,000 as reimbursement for his labor and capital contribution to Peoples Landing. This amount included \$12,142.20 the Washburns previously paid Mr. Hayes, \$16,377.80 the Washburns agreed they owe Mr. Hayes, and \$21,500 for capital and labor contributed by Mr. Hayes. Taking into account the amount already paid Mr. Hayes, the trial court awarded him \$37,857.80.

Mr. Hayes appeals claiming the Contract should be enforced entitling him to \$63,000, Lot 12, and 12% of each lot sold at Peoples Landing. The Washburns argue on appeal that the trial court erred in awarding Mr. Hayes any damages, that they should recover \$16,357.80 from Mr. Hayes, and that sanctions should be assessed against Mr. Hayes.

I. LAW GOVERNING CONTRACT INTERPRETATION

The issue before the court is clearly one of contract interpretation. The question of interpretation of a contract is a question of law. *Guiliano v. Cleo, Inc.*, 995 S.W.2d 88, 95 (Tenn. 1999). Therefore, the trial court’s interpretation of a contractual document is not entitled to a presumption of correctness on appeal. *Allstate Insurance Company v. Watson*, 195 S.W.3d 609, 611 (Tenn. 2006); *Angus v. Western Heritage Ins. Co.*, 48 S.W.3d 728, 730 (Tenn. Ct. App. 2000). This court must review the document ourselves and make our own determination regarding its meaning and legal import. *Hillsboro Plaza Enterprises v. Moon*, 860 S.W.2d 45, 47 (Tenn. Ct. App. 1993).

Our review is governed by well-settled principles. “The central tenet of contract construction is that the intent of the contracting parties at the time of executing the agreement should govern.” *Planters Gin Co. v. Fed. Compress & Warehouse Co., Inc.*, 78 S.W.3d 885, 890 (Tenn. 2002). The court’s role in resolving disputes regarding the interpretation of a contract is to ascertain the intention of the parties based upon the usual, natural, and ordinary meaning of the language used. *Allstate Ins.*

Co., 195 S.W.3d at 611; *Staubach Retail Services - Southeast LLC v. H.G. Hill Realty Co.*, 160 S.W.3d 521, 526 (Tenn. 2005); *Guiliano*, 995 S.W.2d at 95; *Bob Pearsall Motors, Inc. v. Regal Chrysler-Plymouth Inc.*, 521 S.W.2d 578, 580 (Tenn. 1975).

All provisions of the Contract should be construed in harmony with each other to promote consistency and avoid repugnancy among the various contract provisions. *Allstate Ins. Co.*, 126 S.W.3d at 904; *Teter v. Republic Parking Systems, Inc.*, 181 S.W.3d 330, 342 (Tenn. 2005); *Guiliano*, 995 S.W.3d at 95. The interpretation of an agreement is not dependent on any single provision, but upon the entire body of the contract and the legal effect of it as a whole. *Aetna Cas. & Surety Co. v. Woods*, 565 S.W.2d 861, 864 (Tenn. 1978). The entire contract must be considered in determining the meaning of any or all of its parts. *Id.*

In construing the contract, the trial court is to determine whether the language is ambiguous. *Allstate Ins. Co.*, 195 S.W.3d at 611; *Planters Gin Co.*, 78 S.W.3d at 890. If the language in the contract is clear and unambiguous, then the “literal meaning controls the outcome of the dispute.” *Allstate Ins. Co.*, 195 S.W.3d at 611; *Teter*, 181 S.W.3d at 342; *City of Cookeville, Tn. v. Cookeville Regional Med. Ctr.*, 126 S.W.3d 897, 903 (Tenn. 2004); *Planters Gin Co.*, 78 S.W.3d at 890. “A contract term is not ambiguous merely because the parties to the contract may interpret the term in different ways.” *Staubach*, 160 S.W.3d at 526.

II. CONTRACT CLAIM

The trial court found that the Contract was “clear and unambiguous and sets forth the entire agreement of the parties and should be enforced by the court.” Mr. Hayes agrees by arguing on appeal that the Contract is a “valid and binding agreement and should be enforced by the courts.” The Washburns, on the other hand, argue on appeal that the Contract is not valid due to fraud in the inducement of the Contract. According to the Washburns, at the time the Contract was executed, Mr. Hayes told the Washburns that he had documentation supporting the \$63,000 in project expenses but later was unable to produce the requisite documentation during discovery. According to the Washburns, this constituted fraud in the inducement of the Contract such that the Contract is invalid. The trial court disagreed finding the Contract to be valid.

It is true that when a party is induced by fraud to enter into a contract then the defrauded party is entitled to rescission of the contract. *Graham v. First Am. Nat’l Bank*, 594 S.W.2d 723, 726 (Tenn. Ct. App. 1979); *Lamons v. Chamberlain*, 909 S.W.2d 795, 800 (Tenn. Ct. App. 1993); *Williamson v. Upchurch*, 768 S.W.2d 265, 271 (Tenn. Ct. App. 1988). However, in this case the Washburns actually agreed to the \$63,000 investment figure in the Contract. The Contract is quite clear on this point providing “[i]t is agreed that the following debt incurred by Michael Hayes in behalf of Peoples Landing is as follows: . . . Total owed \$63,000.” This was not a representation by Mr. Hayes or a condition of the Contract, but an agreement between the parties. What was meant to be included in this “debt” and why the parties made this agreement is not an issue. As the trial court concluded, the time to raise this issue was before executing a Contract expressly agreeing to this figure. The trial court did not find fraud and, given the circumstances, we see no basis for reversing that determination.

Having agreed with the trial court that the Contract is valid and enforceable, we now consider the trial court's finding of unjust enrichment. The Contract is not an unconditional promise by the Washburns to repay Mr. Hayes for his contribution to Peoples Landing. The Contract describes amounts due Mr. Hayes if and when the subdivided lots at Peoples Landing generate revenue.² The Contract basically addresses three items. First, Mr. Hayes will be repaid for his capital contribution to Peoples Landing by receiving 40 percent of the proceeds of each lot sold until the \$63,000 debt is repaid. Under the terms of the Contract, unless and until a lot is sold, the Washburns have no obligation to Mr. Hayes on this debt. Second, Mr. Hayes will be repaid by the Washburns for his "work involvement" at Peoples Landing by conveyance to Mr. Hayes of Lot 2 of Peoples Landing. Third, after the \$63,000 debt is paid and if Mr. Hayes is still involved in the development, marketing and sales of Peoples Landing, then he will receive 12 percent of any lot sold thereafter.

The trial court found that to enforce the Contract would "unjustly enrich" Mr. Hayes. We believe the trial court erred in its conclusion for two reasons. First, the court erred in allowing the parties to introduce parol evidence to show that the parties' agreement in the contract was not factually correct, *i.e.*, that Mr. Hayes had not contributed \$63,000 to the project. Second, recovery under unjust enrichment is not appropriate where a valid contract exists between the parties.

In reaching the conclusion that Mr. Hayes was "unjustly enriched," the trial court entertained evidence outside the contract to conclude that the Contract was wrong and that Mr. Hayes did not actually contribute \$63,000 to the project. In effect, Mr. Hayes was required to prove that their agreement regarding his \$63,000 contribution was in fact correct. However, when a contract is unambiguous, parol evidence cannot be received to vary, add to, detract from, or contradict the terms of a document, or to modify its legal import. *Freeze v. Home Fed. Sav. & Loan Ass'n of Manchester*, 623 S.W.2d 104, 112 (Tenn. Ct. App. 1981). Known as the parol evidence rule, this rule is intended to protect the integrity of written contracts. *GRW Enterprises, Inc. v. Davis*, 797 S.W.2d 606, 610 (Tenn. Ct. App. 1990) (citing *Newark Ins. Co. v. Seyfert*, 392 S.W.2d 336, 348 (Tenn. 1964)). Only where the contract is ambiguous, is parol evidence allowed to explain the written agreement. *Jones v. Brooks*, 696 S.W.2d 885, 886 (Tenn. 1985). As discussed earlier, the Contract is clear about the amount the parties agreed Mr. Hayes contributed and clearly sets forth the amount the Washburns agreed to pay him. Therefore the trial court erred when it relied on parol evidence to contradict the terms of the agreement.³

Furthermore, recovery under unjust enrichment is not available when the parties have a valid contract on the matter at issue. "[U]njust enrichment, like "quasi-contract" and "quantum meruit," is used to imply a contract where none exists on "the basis of justice and equity." *Paschall's Inc. v. Dozier*, 407 S.W.2d 150, 154 (Tenn. 1966); *Western Express, Inc. v. Dollar General Corp.*,

²The trial court found, in effect, that the Peoples Landing property comprised "29 lots platted for Peoples Landing Subdivision, Phase I" in its order limiting the scope of the lien *lis pendens* in place during the trial. Neither party appeals this finding. These lots appear to be 11 acres of the 358 acre farm.

³It was not error, however, when the trial court considered parol evidence to determine whether fraudulent inducement invalidated the Contract. While parol evidence may not be introduced to contradict or vary the terms of a contract, it may be introduced to show fraud in the inducement of a contract. *Freeze*, 623 S.W.2d at 112.

M2005-02580-COA-R3-CV, 2007 WL 1860751, at *7 (Tenn. Ct. App. June 27, 2007) (perm. app. denied Oct. 15, 2007). Courts may impose a contract where none exists under the quasi-contractual theory of unjust enrichment. *Freeman Industries, LLC v. Eastman Chemical Company*, 172 S.W.3d 512, 524-25 (Tenn. 2005); *Metropolitan Government of Nashville and Davidson County v. CIGNA Healthcare of Tenn., Inc.*, 195 S.W.3d 28, 32 (Tenn. 2005). Unjust enrichment, however, is a substitute for a contract and not a doctrine to be applied to contracts since unjust enrichment presupposes that one party has endowed another with a benefit without compensation.

The underlying principle of the doctrine of unjust enrichment is that a party who receives a benefit that he or she desires, under circumstances rendering retention of the benefit without providing compensation inequitable, must compensate the provider of the benefit.

Freeman Industries, 172 S.W.3d at 525 (citing *Paschall's, Inc.*, 407 S.W.2d at 154).

A valid contract, on the other hand, rests upon mutual consideration. Where a contract exists, a party is “precluded” from recovering under the unjust enrichment theory. *CIGNA Healthcare*, 195 S.W.3d at 33. Consequently, the trial court’s reliance on “unjust enrichment” is misplaced.⁴

Having found the contract is valid, enforceable and unambiguous, our task now is to interpret the Contract as written. First, since no lots have sold, the Washburns have no current obligation to pay Mr. Hayes any of the \$63,000. Mr. Hayes is entitled to reimbursement of his capital contribution only when subdivided lots of Peoples Landing generate revenue. The Washburns agreed to reimburse Mr. Hayes only when the subdivided lots of Peoples Landing started to sell. This Contract is not one where a party is being paid for services rendered. Under the Contract as it is written, Mr. Hayes recovers his \$63,000 investment to the extent the project is successful.

Second, the Contract provided that in consideration for Mr. Hayes’ “work involvement” on the project for the twelve month period before the Contract, he is entitled to receive Lot 2 as “full compensation.” Therefore, Mr. Hayes is clearly entitled to Lot 2, and the Washburns are obligated to transfer that lot to him. This obligation is not dependent on the sale of any other lots. And finally, since Mr. Hayes is no longer involved in Peoples Landing, then he is not entitled to the proceeds on the sales of lots after his \$63,000 contribution if repaid.

Pursuant to the terms of the Contract, Mr. Hayes is entitled to Lot 2. The trial court found that the Washburns had repaid Mr. Hayes \$12,152.20 which does not appear to be challenged on appeal. Therefore, in the event the Washburns sell any of the twenty nine platted subdivided lots comprising Peoples Landing, then they are entitled to a credit of \$12,152.20 on the \$63,000 debt.

⁴While both parties seem to argue that the other became unjustly enriched in this scheme, such potential “unjust” enrichment was obvious when the parties executed the Contract. Mr. Hayes chose to invest in property in which he had no ownership interest, so he cannot now be heard to argue that his efforts increased the value of the property unjustly enriching the Washburns. The Washburns chose to agree that Mr. Hayes had incurred \$63,000 without verifying the amount, so cannot now be heard to argue that the \$63,000 figure is inaccurate and unjustly enriches Mr. Hayes.

III. SANCTIONS

The Washburns argue on appeal that Mr. Hayes should have been sanctioned for failing to provide documentation justifying the \$63,000 debt figure during the discovery process or at trial. According to the Washburns, Mr. Hayes maintained that he had receipts to evidence the \$63,000 but refused to produce them. In a document entitled “Status,” filed in the trial court, the Washburns asked the trial court to assess costs against Mr. Hayes due to “his failure to cooperate in discovery or comply with the Rules of Civil Procedure.”

On appeal, the Washburns argue that, “while the defendants were promised disclosure of documents which plaintiff had or could easily obtain, no motion to compel was thought to be necessary.” The Washburns appeal of this issue is not meritorious. By their own admission, the Washburns never filed a motion to compel under Rule 37 of the Tennessee Rules of Civil Procedure in the trial court. Therefore, the trial court did not have the opportunity to decide whether or not Mr. Hayes was cooperating. Rather, the Washburns simply asked that the trial court to award them costs based on Mr. Hayes’ presumed failure to comply. Rule 37.01(4) allows the trial court to award sanctions after granting a motion to compel. Consequently, the trial court did not err in failing to award sanctions.

The trial court affirmed in part, and reversed in part, and the matter is remanded to the trial court for any further actions that may be necessary.⁵ Costs of this appeal are taxed equally between Mr. Hayes and Mr. and Mrs. Washburn.

PATRICIA J. COTTRELL, JUDGE

⁵ While there were some issues raised by the parties which were not specifically addressed herein, this court found that none of these issues affected our analysis or conclusion.